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April 19, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

FILED/ACCEPTED

APR 19 2012

Federal Communications Commission  
Office of the Secretary

**Attn: CGB Room 3-B431**

**Re: Huntington Park Church of Christ's Request for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-0341  
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications for the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this opposition to the petition of Huntington Park Church of Christ ("Huntington") to exempt its program *Search for Direction* from the Commission's closed captioning rules, 47 C.F.R. § 79.1.<sup>1</sup> Consumer Groups oppose the petition both because it appears to be moot and because

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<sup>1</sup> *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, Huntington Park Church of Christ*, Case No. CGB-CC-0341, CG Docket No. 06-181 (March 20, 2012), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0320/DA-12-428A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0320/DA-12-428A1.pdf); *Petition for Exemption from Closed Captioning Requirement for Huntington Park Church of Christ*, Case No. CGB-CC-0341, CG Docket No. 06-181 (Dec. 19, 2011), <http://apps.fcc.gov/ecfs/document/view?id=7021751261> [hereinafter *Huntington Petition*].

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Huntington does not include sufficient information to demonstrate that it cannot afford to afford captioning.

Consumer Groups acknowledge Huntington's efforts to "get the gospel message out to [its] local community."<sup>2</sup> Nevertheless, the requested exemption would deny equal access to Huntington's programming for the members of Huntington's community who are deaf or hard of hearing. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all viewers who are deaf or hard of hearing can experience the important benefits offered by video programming on equal terms with their hearing peers.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Under section 713(d)(3) of the Communications Act of 1934 ("1934 Act"),<sup>3</sup> as added by the Telecommunications Act of 1996 Act ("1996 Act")<sup>4</sup> and amended by section 202(c) of the 21st Century Communication and Video Accessibility Act ("CVAA"),<sup>5</sup> "a provider of video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome." In its October 20, 2011 Interim

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<sup>2</sup> *Huntington Petition*, *supra* note 1, at 2.

<sup>3</sup> Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

<sup>4</sup> Pub. L. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 47 U.S.C.).

<sup>5</sup> Pub. L. 111-260, 124 Stat. 2751 (2010) (to be codified in scattered sections of 47 U.S.C.).

Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the “undue burden” standard in section 713(e) of the 1934 Act, pursuant to the Commission’s existing rules in 47 C.F.R. § 79.1(f)(2)-(3).<sup>6</sup>

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>7</sup> If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its programming.<sup>8</sup> Where a petition fails to make either of the foregoing showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.<sup>9</sup>

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<sup>6</sup> *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1123/FCC-11-159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf). The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14,961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/011/db1123/FCC-11159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/011/db1123/FCC-11159A1.pdf). See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ Ministries*, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

<sup>7</sup> See *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,955-56, ¶ 28.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

## **I. Mootness**

The Commission can only exempt Huntington's programming "upon a finding that the closed captioning requirements will result in an undue burden" pursuant to rule 79.1(f). If Huntington's programming is not distributed by any entity subject to the Commission's closed captioning requirements, the programming need not be captioned, and there is no possibility that the closed captioning requirements could impose any burden, undue or otherwise, on Huntington.

KSHV TV, the only station broadcasting Huntington's programming, apparently produces less than \$3,000,000 in annual revenue and is thereby exempt from the Commission's closed captioning rules.<sup>10</sup> Huntington does not assert that it broadcasts its programming on any other station. Thus, it does not appear that the Commission's closed captioning rules presently apply to Huntington's programming.

Accordingly, we urge the Commission to dismiss Huntington's petition as moot. There is no legal basis for the Commission to preemptively consider individualized exemptions for programming that is not subject to the closed captioning rules. In the event that KSHV TV is or becomes subject to the closed captioning rules, or Huntington chooses in the future to distribute its programming on another station subject to the rules, Huntington should file a new petition describing those circumstances.

## **II. Huntington's Ability to Afford Captioning**

We believe it would be inappropriate for the Commission to consider Huntington's petition in light of its mootness. If the Commission nevertheless chooses to consider the petition, however, we urge the Commission to dismiss the petition because it does not sufficiently demonstrate that Huntington cannot afford to caption its programming.

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<sup>10</sup> *Huntington Petition*, *supra* note 1, at 2, 8; *see also* 47 C.F.R. § 79.1(d)(12).

To make such a demonstration, a petition must provide both verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers, and detailed information regarding the petitioner's financial status.<sup>11</sup> Both showings must demonstrate that the petitioner in fact cannot afford to caption its programming and eliminate the possibility that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

While Huntington claims that captioning would cost \$175 to \$200 per week and that it lacks "the equipment to reattach the captioning," Huntington provides correspondence from captioning companies offering a turnkey captioning service – that apparently requires no further involvement from Huntington – for \$115 per week.<sup>12</sup> The annual cost of captioning for Huntington at that rate would be less than \$6,000.

Huntington has not presented sufficient information to demonstrate that it cannot afford pay for this cost of captioning. A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed" that demonstrates captioning would present an undue burden on the petitioner's financial resources.<sup>13</sup>

Huntington notes that it has only allocated \$12,000 to its television broadcast.<sup>14</sup> But when evaluating the financial status of a petitioner, the Commission "take[s] into account the overall financial resources of the provider or program owner," not "only

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<sup>11</sup> See *Anglers*, *supra* note 6, 26 FCC Rcd. at 14,955-56, ¶ 28.

<sup>12</sup> *Huntington Petition*, *supra* note 1, at 2, 9.

<sup>13</sup> E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

<sup>14</sup> *Huntington Petition*, *supra* note 1, at 1.

the resources available for a specific program.”<sup>15</sup> Huntington’s 2011 financial statements show a budget shortfall of approximately \$3,500,<sup>16</sup> but Huntington does not provide any information on its available assets, which apparently allow it to operate at a loss and which could be leveraged to pay for captioning.

### **III. Alternative Avenues for Captioning Assistance**

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.<sup>17</sup> A petitioner must provide documentation showing that it has sought assistance from other parties involved with the creation and distribution of its programming,<sup>18</sup> sought sponsorships or other sources of revenue to cover captions, and is unable to obtain alternative means of funding captions.<sup>19</sup> While Huntington provides a list of congregations that contribute to funding its television program,<sup>20</sup> Huntington makes no assertion that it has asked these entities to pay for captioning or that it sought any other funding from its distributor or via other sources such as sponsorships.

### **IV. Conclusion**

Huntington’s petition should be dismissed as moot because its programming is only broadcast on a station that is apparently exempt from the Commission’s closed captioning rules. Moreover, the petition does not include sufficient information to demonstrate that Huntington cannot afford to caption its programming. Accordingly,

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<sup>15</sup> *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,950, ¶ 17.

<sup>16</sup> *Huntington Petition*, *supra* note 1, at 4-5.

<sup>17</sup> *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

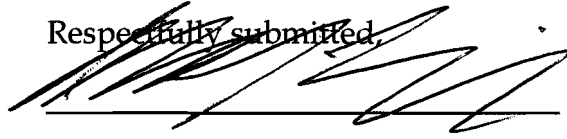
<sup>18</sup> See, e.g., *Engel’s Outdoor Experience*, Case No. CSR 5882, 19 FCC Rcd. 6867, 6868, ¶ 3 (MB 2004), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n. 102.

<sup>19</sup> See *Outland Sports*, 16 FCC Rcd. at 13607-08, ¶ 7 (2001), cited with approval in *Anglers 2011*, *supra* note 6, 26 FCC Rcd. at 14,956, ¶ 28 n. 103.

<sup>20</sup> *Huntington Petition*, *supra* note 1, at 6.

should the Commission choose to consider the merits of the petition, we respectfully urge the Commission to dismiss the petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Blake E. Reid', written over a horizontal line.

Blake E. Reid, Esq.<sup>†</sup>

April 19, 2012

*Counsel for Telecommunications for the  
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<sup>†</sup> Counsel thanks Georgetown Law student clinician Allyn Ginns for her assistance in preparing these comments.

**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**

      /s/      

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### **CERTIFICATION**

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing opposition, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Claude L. Stout". The signature is written in a cursive, flowing style.

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Claude Stout  
April 19, 2012

### **CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on April 19, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

Huntington Park Church of Christ  
6161 West 70th St.  
Shreveport, LA 71129

A handwritten signature in black ink, appearing to read "Niko Perazich", is written over a horizontal line.

Niko Perazich  
April 19, 2012